

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ISIDRO GALAVIZ)	
Claimant)	
VS.)	
)	Docket Nos. 261,557 & 261,558
EXCEL CORPORATION)	
Respondent,)	
Self-Insured)	

ORDER

Claimant appealed the October 24, 2002 Decision entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on April 8, 2003. Stacy Parkinson of Olathe, Kansas, was appointed Board Member pro tem to serve in place of retired Board Member Gary M. Peterson.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Decision.

ISSUES

In Docket No. 261,557, claimant alleged a series of micro-traumas and accidental injuries to his upper extremities. In Docket No. 261,558, claimant alleged a series of micro-traumas and accidental injuries to his back and lower extremities. But the parties agreed that these claims would be consolidated for litigation and decision. Moreover, the parties stipulated that the appropriate date of accident for determining claimant's workers compensation benefits would be August 7, 2000, for both series of accidents and injuries.

In the October 24, 2002 Decision, Judge Fuller denied claimant's request for permanent disability benefits as claimant had sustained no permanent impairment.

Claimant contends Judge Fuller erred. Claimant argues that he has permanent work restrictions, which were placed upon him by the treating physician, and a permanent functional impairment of at least 18 percent. Accordingly, claimant requests the Board to grant him at least an 18 percent permanent partial general disability.

Conversely, respondent requests the Board to affirm the October 24, 2002 Decision. Respondent argues the greater weight of the medical evidence establishes that claimant sustained no permanent impairment while working for respondent.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

Claimant began working for respondent, which is a meat packer, in approximately April 2000. By August 2000, claimant had symptoms in his back and his upper extremities that he attributed to his work duties, which included bending at the waist, reaching and pulling on skins and hides.

Claimant first saw the company's doctor, Dr. J. Raymundo Villanueva, on August 31, 2000. Claimant's primary complaints at that visit were pain in his wrists, elbows and biceps. The doctor diagnosed cumulative trauma disorder and placed temporary work restrictions on claimant that limited his lifting and the repetitive use of his hands. At their third visit, which was on October 12, 2000, the doctor noted claimant had intermittent back pain.

Dr. Villanueva eventually released claimant to return to his regular job duties. But in December 2000, claimant returned to the doctor with increased symptoms in both wrists and elbows and his low back. In the doctor's December 8, 2000 office notes, Dr. Villanueva wrote that claimant could no longer do his regular job and that he needed work restrictions.

The doctor also provided claimant with an elbow strap, soft wrist splints and prescribed medications. At the January 25, 2001 visit, the doctor gave claimant his permanent work restrictions. In his January 25, 2001 office notes, the doctor wrote:

At this time we are going to dismiss him with permanent restrictions. He cannot do repetitive flexion, stooping, twisting of the trunk. He cannot do more than 40 lbs of push, pull, lift, carry, occasional, 30 lbs frequent, 20 lbs constant. I am going to continue the restriction not to do repetitive flexion and extension of the wrist. In

regard of heavy grip, we are going to restrict not to do more than 20 lbs occasional, 12 lbs frequent, and 8 lbs constant.

Besides placing permanent work restrictions on claimant, at their last visit Dr. Villanueva also prescribed claimant pain medication to be continued as needed.

But days later, when Dr. Villanueva reviewed claimant's chart to assess claimant's permanent functional impairment, the doctor determined that claimant had none. The doctor's February 3, 2001 notes read:

Reviewing his chart, I can see that his symptoms were very minor including complaints of pain as well as numbness. I can see that his complaints of numbness were completely unrelated to any particular nerve territory or dermatome.

So with this, I am not awarding any impairment rating secondary to the changes in sensation, because stated, they don't match any specific syndrome.

Since his complaints of pain are also minor, I am not awarding him any impairment rating.

Dr. Villanueva is not the only doctor to conclude that claimant sustained no ratable permanent functional impairment as a result of the work that he performed for respondent. At the Judge's request, Dr. Paul S. Stein evaluated claimant in March 2002 and found that claimant had sustained cumulative trauma in his upper extremities, which had mostly resolved, and some lumbar strain. The doctor, however, concluded claimant had no measurable functional impairment under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment (AMA Guides)* (4th ed.). In his March 1, 2002 report to the Judge, Dr. Stein wrote, in part:

I believe that this patient had some discomfort in his upper extremities due to cumulative trauma disorder, which has resolved for the most part. There is a little by [*sic*] of hypesthesia in the little finger of the left hand, but I don't think that this is clinically significant at this time. I cannot rule out the possibility of some carpal tunnel syndrome on the left. Based on my examination today, I would give no impairment for this. However, if further documentation is desired in this regard, then an EMG/nerve conduction study could be done. If it were negative, then no impairment would be felt to exist. If it were positive, then I think there would be a minimal amount of impairment for a very, very mild left carpal tunnel syndrome.

I believe that this patient has some lumbar strain accounting for his lower back discomfort. There is no indication of radiculopathy. I do not believe there is any indication for additional investigation. I do not believe there is any indication for additional treatment. He is placed in DRE lumbosacral category I as found on page

102 of the AMA Guides to the Evaluation of Permanent Impairment, 4th Edition. This carries a 0% impairment rating.

At the present time, I have no structural reason to place any specific restrictions on this patient's activities. However, he does have some continued complaints of discomfort in the lower back, and continued heavy work activity may, at some point, cause further symptomatology.

Accordingly, claimant's treating physician and the Judge's independent medical examiner concluded that claimant sustained no permanent functional impairment due to the work that he performed for respondent.

The only doctor who found that claimant sustained a permanent functional impairment was Dr. Pedro A. Murati, whom claimant's attorney hired to evaluate claimant for purposes of these claims. Dr. Murati, who examined claimant in September 2001, diagnosed bilateral mild epicondylitis, myofascial pain syndrome in both shoulders and lumbosacral strain. The doctor rated claimant as having an 18 percent whole person functional impairment under the *Guides* (4th ed.).

As indicated above, the Judge determined claimant's injuries did not create a permanent functional impairment. The Board agrees and, therefore, affirms that finding. In this instance, the Board is persuaded by the opinions from claimant's treating physician and the Judge's independent medical examiner. Although it could be argued that claimant's work-related injuries prevent him from performing the physically demanding work that he was performing when he developed his upper extremity and low back injuries, the record lacks evidence to establish the extent of any work disability (a permanent partial general disability greater than the functional impairment rating).

Based upon the above, claimant has failed to establish that he is entitled to receive permanent partial disability benefits as provided by either K.S.A. 44-510d or K.S.A. 44-510e. Accordingly, the October 24, 2002 Decision should be affirmed.

AWARD

WHEREFORE, the Board affirms the October 24, 2002 Decision entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation